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CHARTERS AS MUNICIPAL CONSTITUTIONS

by

Anthony G. White

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Charters are compacts - or contracts - drawn up by the two sides of an authority-granting situation, granting specific rights and powers to an individual or group. In America, the concept of a charter has come to mean a local constitutional document drawn up by a governing authority (either a state legislature or the people of an area) to grant specific powers, rights, and impose obligations upon a municipal government. It is on this legal foundation - the granting of authority - that city governments operate.

Control of local civic affairs is usually defined in state constitutions. In the absence of voter-initiated and adopted authority, the state legislature either (1) creates, amends and maintains local charters as a part of state law, or (2) general laws are passed to govern all cities in the state, usually according to population size (cities of the first class, second class, and so on).

On the other hand, states with constitutions authorizing the local creation and adoption of charters - either city or county - are called "home-rule" states. While making it clear that cities and counties are creations of the state and still

subject to statutory restrictions, such states allow chartered local entities to enact ordinances relating to matters of purely local concern.

A home-rule charter, like the U.S. Constitution, can be best characterized as a series of compromises arrived at by people of differing interests and concerns. While certain structural, political and economic concepts are basic to most such charters, the detain is formed by local conditions prevailing at the time the charter is drafted. It is in this document that the people agreeing to the charter (and those in the minority disagreeing) surrender certain powers to the government, limit and restrict the operations of the government, and express the expectations of benefits to be derived from the creation of such a government.

A certain basic pattern is followed in the drawing up of a charter. Among the steps usually taken are:

Step 1: Reformers feel a need for local control in government, or a change in existing form of government;

Step 2: If necessary, state constitutional and statutory changes are adopted to permit the creation of specific kinds of local government (manager, commission, etc.);

Step 3: A Charter Committee is appointed by some mechanism to draw up a charter;

Step 4: The charter is drafted, revised, and finished;

Step 5: The voter's judge the charter's merits at the polls; and

Step 6: If the vote is successful, the government is created as specified in the charter.

The charter then becomes the basic document for determining what local government can and cannot do, and court cases interpreting municipal powers and responsibilities must draw upon the charter language and the intent of the Charter Committee in choosing one set of wordings over another.

This bibliographic essay is an attempt to gather together the general material available on the subject of charter creation, and in some part reflects the author's last two years of work on a charter. For the reasons of generality, specific charters are not cited, since the charter for any one city or county reflects purely local concerns.

Legal citations are standard journal entries: key words first; followed by reporter volume number; followed by case reporter initials (A is Atlantic, NE is Northeast, F is Federal) and edition (2d is second edition/set of volumes); and completed by the beginning page number. Since there seems to be an increase in the number of charter reviews across the country, it is hoped that this work can be of aid to people interested in charter reform and reforming processes.

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